
CANADA / JUDGMENT

D.S. v. W.D.G.

2016 BCSC 1345

COURT

Supreme Court of British Columbia

DECIDED

20 July 2016

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2016 BCSC 1345 D.S. v. W.D.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.S. v. W.D.G.,

2016 BCSC 1345

Date: 20160720

Docket: E12083

Registry: Campbell River

Between:

D.S.

Claimant

And

W.D.G.

Defendant

Corrected Judgment: The text of the Judgment was corrected

at paragraphs 58 and 59 on August 15, 2016

Before: The Honourable Madam Justice Young

Reasons for Judgment

Counsel for the Claimant:

H. Wenngatz

Defendant Appearing on his own Behalf:

W.D.G.

Place and Date of Hearing:

Campbell River, B.C.

May 30, 2016

Place and Date of Judgment:

Campbell River, B.C.

July 20, 2016

- [1] In this application, a stepfather seeks to terminate support for his 20-year-old child on the grounds that she is not registered full-time in post-secondary education, that she is not passing her courses, that she is conducting herself on social media in such a manner as to frustrate any career opportunities, and finally, that she has unilaterally withdrawn from any contact with him. He says for these reasons she should not be entitled to his continued financial support.
- [2] The child is J.L.G., born in 1996. She did not know that W.D.G. was not her biological father until after her parents' divorce.

PROCEDURAL HISTORY

- [3] This matter came before me in Campbell River on May 30, 2016. By notice of application filed April 11, 2016, W.D.G. applies for an order vacating the terms of the order of Justice Devlin made September 14, 2015. The notice of application says that it is pursuant to s. 152 (2)(a) and s. 152 (2)(b) of the Family Law Act, S.B.C. 2011, c. 25, but it is my view that this application is under s. 17 of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) because the original child support order was made under the Divorce Act.
- [4] The motion says that the grounds for changing the order are that:
- (a) a change in circumstances, as provided for in the Child Support Guidelines, has occurred since the order respecting child support was made;
 - (b) evidence of a substantial nature was not available during previous hearing has become available.
- [5] The motion also, or in the alternative seeks:
- (a) An order for child support retroactive to September 1, 2015 relying on the inherent jurisdiction (of the court);

- (b) An order directing any ongoing support payments be paid directly to the child over the age of majority, J.L.G., and not the claimant;
 - (c) An order directing the claimant to provide proof of J.L.G.'s active participation in a postsecondary education including proof of registration, proof of attendance and proof of progress;
 - (d) Costs on a solicitor and own client basis or as to this Honourable Court may seem just;
- [6] The parties were divorced on the February 15, 2009 by order of the Court of Queen's Bench of Alberta. There was extensive litigation in Alberta as W.D.G. did seek custody of J.L.G. but was unsuccessful. D.S. was allowed to relocate to British Columbia with J.L.G. and W.D.G. and his extended family were granted generous access. I have not seen the Alberta court file and am relying entirely on the parties' materials and submissions.
- [7] Child support was ordered by the Court of Queen's Bench. After J.L.G. turned 18, which is the age of majority in Alberta, W.D.G. waited for a few months and when she was not enrolled in school, he applied to the Court of Queen's Bench to cancel child support. Justice Kenney granted an order on September 30, 2014, declaring that J.L.G. was no longer considered to be a child of the marriage and terminating child support effective September 1, 2014. Kenney J. further ordered that D.S. may apply to reinstate the child as a child of the marriage if J.L.G. is enrolled in full-time school and upon proof of such enrolment.
- [8] D.S. brought an application in British Columbia to reinstate child support. The jurisdictional hearing was conducted by Justice Cole who determined that the Supreme Court of British Columbia did have jurisdiction and is the forum conveniens for purposes of determining child support. Cole J. ordered child support in accordance with the Federal Child Support Guidelines, SOR/97-175 ("FCSG") was payable by W.D.G. retroactive to September 2014 and that special or extraordinary expenses in accordance with s. 7 of the FCSG were payable for J.L.G.
- [9] Justice Cole ordered financial disclosure from W.D.G. and that W.D.G.'s income for the purpose of calculating monthly child support in accordance with the FCSG was to be based on line 150 income on his last Federal tax return.
- [10] I gather from reading comments made by W.D.G. at the hearing before Devlin J., that Cole J.'s order was not enforceable by the Family Maintenance Enforcement Program ("FMEP") so the D.S. brought a further application in British Columbia to fix the terms of the child support order.
- [11] That application was heard by Justice Bowden on August 4, 2015. Bowden J. declared W.D.G.'s annual income for the year 2014 to be \$166,699 and his monthly child support payments for J.L.G. were ordered at \$1,453.29. Bowden J. declared that W.D.G. was in arrears of monthly child support from September 1, 2014 to July 1, 2015 in the amount of \$14,232.14. He further ordered payment of s. 7 extraordinary expenses in proportion to D.S.'s and W.D.G.'s incomes based on their respective line 150 incomes. The issue of ongoing support

past the age of 19 was raised in the hearing before Bowden J. Bowden J. suspended W.D.G.'s obligation to pay child support as of August 1, 2015 to permit the parties to determine on application or agreement whether or not J.L.G. was enrolled in post-secondary education.

- [12] The application to determine whether J.L.G. was enrolled full-time in post-secondary education was heard on September 14, 2015 by Devlin J. I have been provided with a transcript of those proceedings.
- [13] In support of that application, J.L.G. filed an affidavit on September 8, 2015 deposing that she has continuously resided since 2006 in a home in Campbell River where her mother resides. She is a part-time employee of a fast food restaurant in Campbell River. She earned income in 2014 in the amount of \$8,534 while she was working part-time and attending school to upgrade her high school courses. At the beginning of September 2015, she deposes that she became a full-time student, enrolled in the two-year college criminology program, and she attached a document from the college highlighting the program. That material indicates that the program is a two-year full-time program.
- [14] Her full-time enrolment for 2016 was confirmed by the Office of the Registrar of the college a letter dated August 20, 2015. A further letter dated July 17, 2015 from Brooke McIntosh, Education Financial Aid Advisor confirmed that J.L.G. was enrolled as a full-time student at the college from September 2015 until April 2016.
- [15] J.L.G. deposed that she was contributing to her vehicle expenses, cell phone expenses and gym pass and that she purchased a replacement computer with her own funds. D.S. does not charge her rent or contribution for groceries or utilities. All costs for her criminology program have been paid for by D.S. It was necessary for D.S. to cover her on a health and dental plan because W.D.G. removed her from his health and dental plan.
- [16] J.L.G.'s September 8, 2015 affidavit was relied on by Devlin J. in determining whether or not J.L.G. was a full-time student. The application was opposed. Several points were raised before Devlin J. First W.D.G. pointed out that J.L.G. had income and was not paying any expenses in D.S.'s home so J.L.G.'s income was completely disposable. W.D.G. submitted that while the parties were married, they never discussed post-secondary education for their children because they could not afford it. They lived paycheque to paycheque.
- [17] W.D.G. suggested that J.L.G. enrolled in the criminology course so that child support would not end and also because four of her friends were in the criminology course. In his submissions, he said he wanted her to do well in life and to succeed. He was concerned that he had never received a budget for the university or college course.
- [18] W.D.G. submitted that the college is close to J.L.G.'s house so she could walk to school and does not need a car. He opposed the finding that the program was full-time. He submitted that the college gives out those letters saying that it is full-time studies so that the student could qualify for student loans.

- [19] W.D.G. submitted that J.L.G. has not saved five cents in the year and a half that she had been out of school.
- [20] W.D.G. has reviewed J.L.G.'s schedule and submitted that she was only in school for one and a half hours on Monday. She is in school for one and a half hours on Tuesday. On Wednesday, she was in class for one and a half hours during the day and then three hours in the evening. On Thursday, she was in school for one and a half hours.
- [21] W.D.G. also pointed out to Devlin J. that there is a timeframe between April and September where J.L.G. is not going to school and it was his submission that child support should stop during that timeframe and be reinstated once she is registered back in school.
- [22] According to W.D.G., J.L.G. is a member of the Métis Nation and he believes that she is eligible for financial help from the Métis Nation. He submitted that no effort has been made by J.L.G. to investigate this.
- [23] Finally, W.D.G. raised the issue before Devlin J. of having no relationship with J.L.G. She has not spoken to him and does not speak to his parents who live nearby. In a social media post J.L.G. said to W.D.G., "you are dead to me" and in the next page she said, "[D] (the respondent) cut off my phone, don't give him my new number." She also says, "I'm actually planning on not speaking to him for the rest of my life, deadbeat."
- [24] W.D.G. deposes that J.L.G. has been alienated from his family for ten years. He opposes being charged \$1,500 a month to look after an adult who works and is more than capable of taking care of herself and who treats him like he does not exist.
- [25] He concluded in his submissions to Devlin J. by saying:
- I love her to death she's my daughter I want her to succeed. I told her when she graduated I would pay hundred percent of everything. I just like I said I'm not gonna keep paying your mom all this money.
- [26] At page 39 of the transcript, Devlin J. says "I'm satisfied based on the material before me that J.L.G. is in full-time studies and so that settles that matter." She then discussed s. 7 special expenses. Because this matter is a continuation of the hearing before Bowden J., Devlin J. did not feel that she was at liberty to review the calculation of child support. Her task was to determine whether J.L.G. was a full-time student or not. There was insufficient evidence before Devlin J. to determine what J.L.G.'s budget might be for school and to allocate that budget between the two parents and the child.

IS J.L.G. ENROLLED FULL-TIME IN SCHOOL?

- [27] W.D.G. asked me to set aside Devlin J.'s order because he has conducted further investigation on the number of hours that J.L.G. attends school and compared it to the definition of a full-time student in various educational institutions.

- [28] I will not vary Devlin J.'s finding that J.L.G. was enrolled full-time in school on the basis of this submission because this is not new evidence. The material provided to me from various educational institutions on what full-time enrollment is was available to W.D.G. at the time of the hearing before Devlin J. should he have chosen to pursue it. The material supports the same argument that he already made before Devlin J.. W.D.G. advised Devlin J. of the hours that J.L.G. attended school. Devlin J. found that J.L.G. was enrolled full-time in school in September 2015. There is evidence on the file that that enrolment continued until April 2016.
- [29] In the material before me on May 30, 2016, I could not determine whether J.L.G. had continued her enrollment in the criminology course and so I requested additional affidavit material.
- [30] At my request, J.L.G. has provided an affidavit dated June 13, 2016, attaching as exhibit "B", confirming that she is, in fact, registered in the 2016-2017 fall/winter semesters and that her academic year will commence on September 6, 2016. This is an official letter from the Office of the Registrar of the college I accept that evidence. Tuition of \$1,210.46 is due prior to her commencement of the fall term.
- [31] This amount was paid by D.S. on her MasterCard on June 7, 2016.
- [32] J.L.G. is enrolled in four courses in the fall semester and three courses in the winter semester. Tuition for the winter semester is \$935.46.
- [33] As for her future prospects, J.L.G. reports that if she maintains a minimum grade point average throughout her first two years of study then she would be eligible to complete the final two years of a Bachelor of Arts in Criminology at V.I.U. and she attached the programming course calendar.
- [34] At present, it is J.L.G.'s intention is to complete all four years of a bachelor's degree in criminology and to pursue a career in law enforcement which would either be in policing, sheriff services or corrections work.
- [35] J.L.G. is estranged from W.D.G. I will review the evidence of estrangement after summarizing the law.

CHILD OF THE MARRIAGE

The Law

- [36] The Divorce Act defines "child of the marriage" in s. 2(1) which provides:

child of the marriage means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;

[37] From the Department of Justice website, I have learned that the age of majority is 18 in six provinces, namely, Alberta, Manitoba, Ontario, Prince Edward Island, Quebec, and Saskatchewan, and the age of majority is 19 in four provinces and the three territories, namely, British Columbia, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, and Yukon. J.L.G. has lived in British Columbia for a number of years now so 19 is the relevant age of majority for this case analysis.

[38] The jurisdiction of the court to order a parent to support his or her child is found in s. 15.1 of the Divorce Act which says:

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

[39] The Divorce Act adopts the FCSG Regulation in s. 15.1(1)(3), which says:

(3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.

[40] The onus is on the applicant to prove that an adult child is unable to withdraw from parental support or provide the necessities of life from his or herself: *Law v. Law* (1986), 2 R.F.L. (3d) 458 at 462 (Ont. S.C.) [Law].

[41] The pursuit of education has been interpreted by many courts to render a child unable to withdraw from the parent's charge or obtain the necessities of life: *Martin v. Martin* (1988), 26 B.C.L.R. (2d) 390 (C.A.).

[42] Any analysis of child support for children over the age of majority should start with the frequently cited case of *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C.S.C.) [Farden] written by Master Joyce, as he then was. In that decision he recited a list of factors that the court may consider before finding that an adult was still a "child of the marriage". The factors are not mandatory but are a useful guide. The facts in *Farden* are similar to the facts in this case. The child support order was made under the Divorce Act. The child was enrolled in school but there was an issue about the pace of his studies. The child was alienated from the father and there was a suggestion that the mother had been responsible for that alienation. The child at the time of the application wanted nothing whatsoever to do with his father.

[43] In *Farden*, Master Joyce said (at p. 64):

Whether or not attendance in a post-secondary institution will be sufficient cause for a finding that the child is still a "child of the marriage" requires examination of all of the circumstances. It is not a conclusion which follows automatically from proof of attendance at the institution [*McNulty v. McNulty* (1976), 25 R.F.L. 29 (B.C.S.C.)].

[44] The other factors that the court may wish to consider are now referred to as the *Farden* factors because of the frequency of reference to them. Those factors are:

- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
- (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
- (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
- (4) the ability of the child to contribute to his own support through part-time employment;
- (5) the age of the child;
- (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
- (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
- (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

[45] Termination of the relationship with a parent was previously discussed in *Law* where at p. 462, Fleury L.J.S.C. said:

In the case at bar, Kimberley Ruth Law has reached the age of 22. She has not seen fit to contact her father to keep him apprised of her progress in university and no evidence was made available to the claimant until he unilaterally ceased making maintenance payments for her benefit when she turned 21 in 1985. ... Kimberley has certainly withdrawn from the applicant's charge as a result of her failure to maintain any contact with him. Although it is sufficient that she be in the custodial parent's charge, I am of the view that where, as here, a mature child unilaterally terminates a relationship with one of the parents without any apparent reason, that is a factor to be considered by the trial judge in determining whether it would be "fit and just" to provide maintenance for that child. A father-child relationship is more than a simple economic dependency. The father is burdened with heavy financial responsibilities and the child has very few duties in return. It seems reasonable to demand that a child who expects to receive support entertain some type of relationship with his or her father in the absence of any conduct by the father which might justify the child's neglect of his or her filial duties.

(emphasis added)

- [46] In *Farden*, the son has refused to consider any sort of relationship with his father. The trial judge in the custody case had found as a fact that the mother had alienated the son from the affection of his father. Master Joyce recognized that as a child, the son may have had little control over the situation. However, as an adult, he could reinstate contact with the parent from whom he sought support but he chose not to. This and a lackadaisical pace of the son's study were the reasons Master Joyce dismissed the application.
- [47] The focus is on the unilateral nature of the withdrawal from a relationship. If it can be found that the payor parent contributed to the alienation, then it is not grounds to terminate support. This is of course to prevent a parent from creating alienation in order to avoid his or her responsibility to support his or her child.
- [48] In *Shaw v. Arndt*, 2016 BCCA 78 at para. 25 [Shaw], the BC Court of Appeal referred to *Farden* and said that this case does not provide a set of iron-clad requirements that must be met by adult children seeking financial assistance from their parents: *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406 (B.C.C.A.); *Neufeld v. Neufeld*, 2005 BCCA 7.
- [49] In *Shaw*, after reviewing the authorities dealing with the difficult issue of alienation, at para. 29, Newbury J.A. quoted a paper written by Mr. Justice David Corbett entitled *Child Support for Estranged Adult Children* in 2010, and says, "In my view, this summary provides a useful description of the current law concerning the estrangement of adult children from their parents":
- (a) Contrary to certain recent literature, there has not been "growing judicial recognition" that the quality of the relationship should have a bearing on child support.
 - (b) Courts have been willing to impose a few specific responsibilities on adult support recipients, and may properly do so, but not conditions that include maintaining a social relationship with a parent.
 - (c) The statutory basis for taking the quality of the child-parent relationship into account is dubious.
 - (d) There is appellant authority permitting the court to place some weight on the parent-child relationship, but that authority is more ambiguous than trial and motions court decisions suggest.
 - (e) On the current state of the law, there seems to be a discretion to take this factor into account, though few courts do, and fewer have found it a significant factor in a support decision.
 - (f) The better view is that if conduct is ever relevant, it should only be in truly egregious cases of misconduct by a child against a parent. [At para. 172; emphasis added.]

ANALYSIS

[50] Although it is not a requirement that all the Farden factors be met, I have found it to be a useful format for my analysis. I will set out each of the factors below in my discussion:

1) Whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies

[51] I have accepted the finding of Devlin J. that the criminology course that J.L.G. is enrolled in is considered to be full-time study by the college she attends. The new evidence satisfies me that J.L.G. is registered for the fall 2016 and winter 2017 semesters. If she does well, she may transfer her credits to a university to complete a full Bachelor of Arts in Criminology. She will have to provide that evidence next year if she succeeds in getting admitted to university.

2) Whether or not the child has applied for or is eligible for student loans or other financial assistance

[52] D.S. has sought full child support plus s. 7 special expenses with no thought as to how J.L.G. could contribute to these costs. If J.L.G. is entitled to funding because she is a member of the Métis Nation, she should investigate that opportunity. If she can contribute to her education costs then she is obliged to do so. It is reasonable that she apply some of her income to her vehicle costs and her gym pass, but some amount of her current income of \$14,000 should be applied to her expenses during her school year.

3) The career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do

[53] It is difficult to judge this factor. I suspect that only a small percentage of young people finish high school and know with certainty what career they want to pursue. Those few are lucky to have a sense of vocation or passion for a subject matter. The rest struggle to come up with a plan for post-secondary education. Having limited life experience, the beginning of post-secondary education is very much a trial and error exploration. If J.L.G. went into criminology because some of her friends did, then I do not fault her for that.

[54] It appears from her material that she does enjoy the program and thinks that she does wish to pursue a career in the field and a bachelor's degree if her marks are good enough.

J.L.G.'S SOCIAL MEDIA CONDUCT

[55] W.D.G. questions whether J.L.G. has a reasonable and appropriate career plan given her extra-curricular activities which are chronicled on Facebook.

[56] He argues that J.L.G. has disqualified herself from many job prospects and career opportunities that would be afforded to her with the criminology diploma due to her inappropriate social media presence.

- [57] In his first affidavit, W.D.G. attached photographs of J.L.G. taken from her Facebook page, which appear to be photographs of J.L.G. engaged in illegal drug use. He also says in his affidavit that she posts personal sexually explicit photographs and video imagery on a webpage. Unfortunately, W.D.G. brought samples of these photographs to Court in a sealed envelope and I reviewed the photographs and can confirm that some of the photographs depict what appears to be illegal drug use and some of the photographs are of a scantily clad young woman in various positions, some of them sexual.
- [58] In an effort to explain her conduct, J.L.G. forwarded an email to D.S.'s lawyer, saying that the photograph of the handful of pills were pills that her best friend's mother takes every morning. The photograph was a joke. The image of her smoking what appears to be a joint is apparently her "vaping". These explanations miss the point. The images give the viewer the distinct impression of illegal drug use. L.G.'s Twitter account name has a drug and alcohol reference in the name. This is a poor choice of handle for someone interested in working in the criminal justice system.
- [59] J.L.G. denies using drugs. She says that she has never been in trouble with the law. She says that she only consumes alcohol sparingly which begs the question why she would use the twitter account name with the alcohol and drug reference in it. She swears that she is no longer using that Twitter account name. This was an address that she adopted when she was much younger.
- [60] J.L.G. does not consider the scantily clad photographs to be nude. She says they are posted on her blog to show her progress as she is actively attending a gym.
- [61] In her June 13, 2016 affidavit, J.L.G. deposes that she had difficulty obtaining copies of the photographs which I was shown in Court. I sealed the photographs and returned them to W.D.G. because I did not think it was appropriate that they be exhibited in evidence.
- [62] J.L.G. says that several of the photographs were not of her and have nothing to do with her and she attached those photographs as Exhibit "G" to her June 13, 2016 affidavit. Of course, this just encouraged W.D.G. to submit more photographs to show that they were of his daughter.
- [63] I can say that some of the sexually explicit photographs are of bodies only and I could not determine whether they are of J.L.G. or not. I am not going to get embroiled in the debate about which sexually explicit pictures are of J.L.G. and which are not.
- [64] I accept W.D.G.'s argument that if J.L.G. truly wishes to pursue a career in the criminal justice field, it is highly inappropriate for her to be posting images on Facebook of drug paraphernalia and/or semi-nude photographs of herself. These photographs will follow her everywhere and would be a source of great embarrassment to her as an adult pursuing a career in criminal justice. Having said that, I do not believe that this conduct disqualifies J.L.G. from getting an education. If every student was disqualified from funding for education because of their reckless behaviour, then it is likely that very few young people

would qualify for educational funding. I do, however, urge J.L.G. to rethink her social media presence if she is serious about pursuing a career in the criminal justice system.

- 4) The ability of the child to contribute to his (or her) own support through part-time employment;

[65] J.L.G. has flexible supportive part-time employment. She earned \$14,025.79 last year. She anticipates her 2016 income to be lower, although she said that in 2015, her income increased by over \$5,000. J.L.G. is contributing \$485 a month for her vehicle, cell phone and gym pass.

[66] By my calculation, based on W.D.G.'s submissions, J.L.G. is only in class for nine hours a week. Assuming that she spends about the same amount of time at her home work, she is occupied by her studies for 20 hours per week and should be able to work 20 hours at her part-time job. She could earn about \$200 a week during the school year. For the four months she is out of school, there is no reason why she could not work 40 hours a week and earn \$400 a week during the summer. If I add these estimates, I arrive at an annual income of \$13,088, which is less than what J.L.G. actually earned in 2015.

- 5) The age of the child

[67] J.L.G. is a young adult. She will turn 20 this month.

- 6) The child's past academic performance, whether the child is demonstrating success in the chosen course of studies

[68] I was shown a transcript of J.L.G.'s grades in Court on May 30, 2016. W.D.G. advised me that she was required to get a 70% average to pass the course, and it appeared that she had received a D for one of her courses and a C- for another, which would not constitute a passing grade. I requested J.L.G. to comment on this and she reported that this is false. She successfully completed her first year in 2015-2016 full-time study of the two-year criminology program at N.I.C., having gained full credit for classes and maintained a cumulative grade point average of 2.376. She attached as Exhibit "A", a letter from N.I.C., confirming that she completed and passed all her courses in the fall of 2015 and 2016 winter terms. That letter states that at university level, the College confirms that attendance is not tracked.

[69] I gather from the limited material I have, that J.L.G. is a struggling student who had to upgrade her high school grades to get into a college course. She has passed all her courses in first year college with low marks in some subjects and average to above average marks in other subjects. I do not know how much effort she puts into her studies but she is passing. If she fails her courses, then she will no longer get funding unless she has a plan to retake a failed course.

[70] If she is working to her fullest capacity then she should be commended for her efforts and not criticized.

- 7) What plans the parents made for the education of their children, particularly where those plans were made during cohabitation
- [71] According to W.D.G., the family did not anticipate paying for a university education during their cohabitation. I have to assume his income increased post separation because he now has a healthy income and one would expect that he would assist his child. In his comments to Devlin J., he certainly did intend to assist J.L.G. with her studies.
- 8) At least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [72] J.L.G. is now a mature child who is almost 20 years of age. She did not discuss any educational pursuits or future career plans with W.D.G.
- [73] J.L.G. posted a message saying that "W.D.G. is dead to her", that "he is an abusive piece of sh-t", that "he will get what's coming to him", and that she will never speak to him again.
- [74] W.D.G. said he paid for J.L.G.'s phone bills for eight or nine years. When she started calling him "a piece of garbage" and texted his step-daughter to say that he was dead to her (J.L.G.), he stopped paying for her phone bills.
- [75] J.L.G. has had nothing to do with W.D.G.'s extended family for over one year despite the fact that some of them live near her.
- [76] J.L.G. has a new step-father who is D.S.'s partner, and J.L.G. refers to him as dad.
- [77] W.D.G. says that his relationship with J.L.G. has been strained at best since 2008 when D.S. disclosed to J.L.G., without his knowledge or consent, that he is not her biological father.
- [78] W.D.G. says that he and J.L.G. spent over six years in Court ordered parent/child counselling to try to mend the father/child relationship. He believes that D.S. has gone out of her way to sever J.L.G.'s relationship with him.
- [79] In response to this, D.S. says that J.L.G. has had difficulty coping with the constant berating by W.D.G. and by his immediate family, the impact of which has needlessly reflected on her grades at school and the need for further counselling. She attaches a very offensive message sent by W.D.G.'s sister to J.L.G. berating J.L.G. for applying to Court for child support from W.D.G. In that message, W.D.G.'s sister makes offensive statements about D.S.. She concludes by saying she is ashamed and embarrassed to even think of what J.L.G. is doing by applying for child support so she can continue her studies. She says:

Karma will come your way in one form or another and I hate to say it but you'll deserve it. I wish you success in your future endeavors. You are officially dead to me now.

- [80] How an adult could think that this was an appropriate way to communicate with a 19-year-old whose mother seeks financial aid for the child's education escapes me. If J.L.G. has required ongoing counselling, then I am not surprised.
- [81] J.L.G. has suffered the consequences of the hostile divorce of her parents. A counsellor was retained to attempt to reduce the hostility. D.S. attaches a letter from the counsellor, Mr. Bruce Muir, dated March 2010. In that letter, Mr. Muir is canvassing the possibility of a joint parenting relationship between D.S. and W.D.G.. D.S. told Mr. Muir that she was willing to work with W.D.G. but W.D.G. said he refused to have anything to do with D.S. because he cannot trust her. In the March 2010 letter, Mr. Muir says that he hopes that W.D.G. will let go of his rage toward D.S. He says W.D.G.'s anger is so strong that he is unable to refrain from making negative comments about D.S. while he is in session with J.L.G.
- [82] W.D.G. opposed ongoing counselling and said he could not afford it. Mr. Muir recommended that J.L.G. have access to a qualified family therapist on a semi-regular basis so she has an avenue to share her concern with an unbiased trained observer.
- [83] J.L.G. continues to undergo counselling with Mr. Muir. She says this is a result of the constant disparagement and outright hatred she feels directed toward her from her step-father. W.D.G. says he loves J.L.G. very much (in his oral submissions to Devlin J.) but he is clearly not communicating this to his daughter. J.L.G. appears to perceive the removal of her cell phone and W.D.G. refusing to financially support her post-secondary education as an act of hatred.
- [84] I concluded from this evidence that J.L.G. has not "unilaterally" terminated a relationship with W.D.G. There is ample evidence that W.D.G. and his family have brought this estrangement on themselves. Constantly belittling a child's mother will alienate the child. The evidence I place the most weight on in coming to this conclusion is the horrible letter from W.D.G.'s sister. That letter leaves me no doubt that J.L.G. has been subjected to disparagement from W.D.G.'s family because D.S. on her behalf has sought child support for her education.
- [85] I want to make a strong message to W.D.G.'s family. You will not reduce W.D.G.'s child support obligations by bullying J.L.G..
- [86] Since J.L.G. did not unilaterally terminate a relationship with W.D.G., her refusal to speak to him or his family does not disqualify her from obtaining support.

Has there been a material change in circumstance sufficient to change the orders of Justices Bowden and Devlin?

- [87] D.S.'s line 150 income in 2014 was \$45,745. In 2015, her line 150 income is \$50,682.

- [88] W.D.G.'s income for 2014 was \$166,669 and in 2015 it was \$159,032. W.D.G. lost his home in the Fort McMurray fire. The loss is likely covered by insurance but the adequacy of the coverage is not known. He did not apply to vary support on that basis because the application was filed before the fire but I would be remiss if I did not consider it as a factor.
- [89] J.L.G.'s income was \$8,534 in 2014. It increased to \$14,025.79 in 2015 despite the fact she predicted in her September 8, 2015 affidavit that it would go down.
- [90] I find that the change in financial situation of all parties is material and that the threshold for variation of support as articulated in s. 17 of the Divorce Act and in the case of C.A.O. v S.J.O., 2012 BCSC 378, referred to by counsel for D.S. has been met. This permits me to take a further look at the quantum of support payable to J.L.G.

QUANTUM OF SUPPORT

- [91] The FCSG established what the quantum of support should be.
- [92] In s. 3(1), the FCSG provides a presumptive rule for calculating support for children under age of majority followed by the discretionary rule for calculating support for children over the age of majority:

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

Child the age of majority or over

- (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
 - (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

Applicable table

- (3) The applicable table is
 - (a) if the spouse against whom an order is sought resides in Canada,

- (i) the table for the province in which that spouse ordinarily resides at the time the application for the child support order, or for a variation order in respect of a child support order, is made or the amount is to be recalculated under section 25.1 of the Act,
- [93] Full FCSG child support according to the applicable table in Alberta for a payor earning \$159,032 is \$1,384.
- [94] I consider it inappropriate for W.D.G. to pay \$1,384 a month for 12 months of the year plus his proportionate share of tuition costs when J.L.G. earns \$14,000 a year.
- [95] Unfortunately, I know very little of the financial situation of the parties.
- [96] I know that D.S. is in a new marriage. I do not know what her husband earns or what their household expenses are. W.D.G. is in a new marriage and has other children to support. I do not know what his expenses are or whether his wife contributed an income to their household.
- [97] D.S. provides J.L.G. with room and board for free as her contribution but she has been receiving close to \$1,500 child support payments from W.D.G. so her contribution is being fully funded by W.D.G.. Since this is a joint obligation, D.S. should be making some contribution as well.
- [98] As an adult, J.L.G. has an obligation to contribute a reasonable amount to her expenses. I will assume that she can earn an average of \$1,000 a month. This provides her some time off and some time while writing exams. It is reasonable that she contribute a minimum of \$600 a month toward her expenses which includes the \$485 she contributes to her vehicle, cell phone and gym pass. The balance of \$115 a month can be applied to her tuition which will be a \$1,380 contribution toward her annual education costs. The balance she earns can be used for clothing, toiletries, and entertainment costs. Based on last year's income, this would leave her an additional \$566 a month for those items.
- [99] Given the change in circumstance, I find it reasonable to reduce W.D.G.'s child support obligation to \$750 a month for 12 months rather than ordering a higher amount for the eight months that J.L.G. is in school. I expect D.S.'s contribution of room and board has a value of about \$500 a month. \$1,250 a month for a student's expenses is quite generous. (\$15,000 a year). I have not suspended W.D.G.'s support during the summer to enable J.L.G. to save some of her employment earnings for her contribution toward her educational expenses and living expenses during the winter when her work hours will drop.
- [100] It would have been better to have an actual budget from D.S. and J.L.G. but if I were to order it now, that would further delay this decision and they need to know what support to expect for the coming semester.
- [101] The \$750 a month in child support will be backdated to commence on May 1, 2016 and will terminate on April 30, 2017. It may be extended by consent or further order of the court.

- [102] I will not order that the support be payable to J.L.G. That would place an additional burden on J.L.G. to ensure the funds were collected and to budget the money and pay her mother for room and board. D.S. has been providing for J.L.G. since her birth and I see no indication that she has mismanaged that money.
- [103] D.S. and W.D.G. will share the balance of tuition costs in proportion to their incomes after deducting J.L.G.'s contribution of \$1,380.
- [104] D.S. and W.D.G. will also share the cost of J.L.G.'s counselling in proportion to their incomes commencing May 1, 2016 and continuing until April 30, 2017. If any portion of that counselling is covered by their extended health benefits, then those benefits will be applied first and the balance will be apportioned. J.L.G. is not required to contribute to this cost. If it is not already obvious, the reason I make this order is that J.L.G. has suffered trauma from the hostile divorce her parents and they both owe her the benefit of counselling to aid her in her recovery.
- [105] Commencing May 1, 2016 and ending April 30, 2017, W.D.G. will pay 75% of s. 7 special expenses and D.S. will pay 25% of that expenses. To be clear, the portion of tuition, educational fees and books that is to be considered special expenses is the total minus the child's contribution of \$1,380 for the year.
- [106] If J.L.G. intends to continue her education after April 2017, she must provide W.D.G. with the following information by July 1, 2017 if she wishes to have child support reinstated to fund the balance of her first university degree:
- 1) A transcript of her grades from the 2016-2017 year;
 - 2) Proof of acceptance to university as soon as it is received (understanding that may be after July 1 2017);
 - 3) Proof from the university of what her tuition books and other educational expenses will be;
 - 4) A budget of all of her expenses for the school year;
 - 5) disclosure of any grants or scholarships that she has qualified for;
 - 6) Proof of her 2016 income which should be a full T-1 General Income Tax Return and a Notice of Assessment; and
 - 7) Proof of her year to date 2017 income up to June 30 2017 and an estimate of her ongoing income for 2017.
- [107] If child support is to continue past April of 2017, D.S. must also provide W.D.G. with her full T-1 General Income Tax Return and Notice of Assessment for 2016. W.D.G. will also be required to prove his income for 2016 by providing D.S. with his full T-1 General Income Tax Return and Notice of Assessment for 2016.

[108] As the court needs to decide what child support is reasonable having regard to the needs, means and other circumstances of the parties, if the parties apply to the court to set the ongoing amount of child support, I order both D.S. and W.D.G. to exchange full Form F8 Financial Statements disclosing their income, expenses, assets and liabilities and the income of their spouses.

[109] What I anticipate occurring is that J.L.G.'s financial needs will be apportioned between D.S., W.D.G. and J.L.G. as I have done here today.

SUMMARY OF THE ORDERS

- 1) I declare that J.L.G. remains a child of the marriage because she has not withdrawn from parental charge and cannot provide all the necessities of life while she is registered in the full-time college criminology program;
- 2) The application to set aside or vacate the order of Devlin J. dated September 14, 2015 is dismissed.
- 3) The quantum of support ordered by Bowden J. on August 4, 2015 is varied as of May 1, 2016 based on a finding that there has been a material change in the parties' financial circumstances and specifically a finding that D.S.'s income for 2015 is \$50,682, W.D.G.'s income for 2015 is \$159,032, and J.S.G.'s income for 2015 is \$14,025.
- 4) W.D.G. will pay child support in the amount of \$750 a month commencing May 1, 2016 and continuing until April 30, 2017 payable to D.S. on the first day of each and every month.
- 5) J.L.G. will contribute \$1,380 toward her tuition, education fees and books for the September 2016-April 2017 school year.
- 6) D.S. and W.D.G. will contribute to J.L.G.'s tuition, educational fees and books after deducting the \$1,380 contribution from J.L.G., in proportion to their incomes. D.S. will be responsible for 25% of those expenses and W.D.G. will be responsible for 75% of those expenses.
- 7) From May 1 2016 to April 30, 2017, D.S. and W.D.G. will share the cost of J.L.G.'s counselling in the same proportion as set out above, after deducting any extended health coverage.
- 8) If J.L.G. intends to continue her studies after April 2017 and seeks ongoing child support then she must provide the following information to W.D.G.:
 - a) A transcript of her grades from the 2016-2017 school year;
 - b) Proof of acceptance to university as soon as it is received (understanding that may be after July 1 2017);
 - c) Proof from the university of what her tuition books and other educational expenses will be;
 - d) A budget of all of her expenses for the school year;
 - e) disclosure of any grants or scholarships that she has qualified for;

- f) Proof of her 2016 income which should be a full T-1 General Income Tax Return and a Notice of Assessment; and
- g) Proof of her year-to-date 2017 income up to June 30, 2017 and an estimate of her ongoing income for 2017.
- 9) If D.S. requests ongoing child support for J.L.G., then D.S. shall deliver to W.D.G. her full T-1 General Income Tax Return and Notice of Assessment for 2016 on or before May 1, 2017 and W.D.G. shall deliver to D.S. his full T-1 General Income Tax Return and Notice of Assessment for 2016 by May 1, 2017.
- 10) If either party applies to court for ongoing child support, then I order both D.S. and W.D.G. to exchange full Form F8 Financial Statements disclosing their income, expenses, assets and liabilities and the income of their spouses.

COSTS

[110] W.D.G. has not been successful with his main application to terminate child support. I rejected his argument that J.L.G. is not a child of the marriage. He was successful in his application for a variation of the child support. The corollary is that D.S. successfully defended the application to terminate the child support but failed in her attempt to maintain full child support. The child of the marriage argument constituted the majority of the argument and the decision. Accordingly, I award D.S. 75% of her costs in the amount of \$750 for a half day contested application of ordinary difficulty. I am not awarding any costs for the filing of additional affidavit material. I found the original material to be lacking in sufficient detail to decide the case and so no additional costs are warranted.

"Young J."

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